

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

March 6, 2007

In the Matter of
City of Salem

Docket No. 2007-016
File No. SE64-430
Salem

RECOMMENDED FINAL DECISION

Diane and James Richmond filed a one page fee transmittal form intended to accompany payment of the fee for requesting an adjudicatory hearing, which I have considered a request for an adjudicatory hearing. Unfortunately, the submission was misplaced in this office after its receipt. When it was found, a conference call was immediately scheduled with the petitioners and counsel for MassDEP in order to inform the petitioners that their Claim required additional information in order to meet the requirements of 310 CMR 1.01(6)(b). Mr. Richmond participated in the conference call along with MassDEP counsel Samuel Bennett, Esq.

An Order for A More Definite statement was issued requiring them to supplement their claim by February 26, 2006 or have their Claim dismissed.¹ The missing information discussed during the conference call and required by the Order included a copy of the appealed document (presumably a Superseding Order of Conditions), a statement of the reasons that the Superseding

¹The identity of the applicant was not clear from the Fee Transmittal Form (the petitioner's Claim) which listed the Richmonds as the applicant. During the conference call with the petitioner James Richmond and MassDEP counsel, Mr. Richmond indicated that the project applicant is the City of Salem. The municipality was added as a party to this matter and sent a copy of the Order for a More Definite Statement.



Order was alleged to be inconsistent with the Wetlands Protection Act regulations or does not contribute to the protection of the interests of the Act, and a statement of changes desired to the Superseding Order. The petitioners also had to submit sufficient written facts to demonstrate their status as persons aggrieved, abutters or a ten person or residents group, and documentation of their prior participation in the permit proceedings. The required information was to have been filed by February 26, 2007.

No submission has been filed. I conclude that the petitioners are no longer pursuing this Claim and recommend its dismissal for lack of prosecution pursuant to 310 CMR 1.01(5)(a)15.f.vi and 310 CMR 1.01(10).

NOTICE

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her final decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c.30A. The Commissioner's Final Decision is subject to rights and reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any portion of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Acting Commissioner Arleen O'Donnell March 9, 2007.

